



## **Montana Fish, Wildlife & Parks**

Region Four Headquarters  
4600 Giant Springs Road  
Great Falls, MT 59405  
August 22, 2007

### **Decision Notice Draft Environmental Assessment Wing Dam Fishing Access Site Acquisition & Development**

#### **Description of Proposed Action**

On May 24, 2007, Montana Fish, Wildlife & Parks (FWP) published an Environmental Assessment (EA) for public review regarding the proposed acquisition of 22-acres of land adjacent to the Wing Dam Fishing Access Site (FAS) on the Missouri River.

The proposed action discussed in the EA involved the acquisition of a 22-acre island in the Missouri River through donation from a private landowner, along with associated development of the existing and adjacent Wing Dam FAS. The proposed development included installing standard FAS signage, improving the parking area, constructing a trail from the parking area to the riverbank, and installing fencing to delineate the boundary of the FAS, allowing FWP to better manage public usage at the site. This acquisition and development would increase public access and recreational opportunities on the Missouri River.

#### **Public Comments**

The Draft Environmental Assessment was posted for public comment from May 24 through July 12, 2007. To ensure that the citizens in the Willow Bend Subdivision adjacent to the project area had an adequate opportunity to comment, the comment period was extended through July 12, 2007. A total of 25 public comments were received, with 16 comments generally opposing FWP's proposed action, seven comments generally supporting FWP's proposed action, and two comments that were relatively neutral.

#### **Those opposing the proposed action cited the following major concerns:**

- 1) Trespass onto adjacent private property.

*Response: FWP would propose to use fencing, signing or carsonite posts to adequately mark the property boundary. Adjacent landowners could also mark their property boundary with orange fence posts.*

2) Vandalism, theft, and public safety on adjacent private property.

*Response: Vandalism, theft and public safety on private property is beyond the jurisdictional limits of FWP. However, FWP staff would cooperate fully to the best of their abilities to minimize the potential for this occurring on adjacent private land.. The county has laws in place, enforcement and prosecution mechanisms to address improper activities on private property. FWP Wardens have the authority to enforce trespass law and would cooperate fully to the best of their abilities in any investigation. FWP will make every effort to post appropriate signs warning against trespass onto private property.*

3) Impacts to wildlife habitat.

*Response: As described in the EA, some species of wildlife would be displaced and dispersed from the FAS. However, although human use may increase as a result of legal access from the river, land stewardship, and habitat protection by FWP would result in maintenance and improvement of wildlife habitat by minimizing human caused habitat perturbations.*

4) Risk of wildfire from campfires, smoking, etc.

*Response: Regulations for the site would not allow campfires to minimize the potential threat from fire. FWP is concerned about the risk of wildland fire and frequently takes steps to implement fire, smoking, and combustible engine restrictions during times of high fire hazard. Fire suppression on this site is the responsibility of local fire departments dispatched by the County 911 system, just like it would be on neighboring landowner's properties.*

5) Hazards associated with hunting near residential area.

*Response: Currently under private ownership, no weapons restrictions are in effect. Most of the hunting [shooting] would be for waterfowl and would be mostly directed away from the houses toward the river. FWP will take action to minimize conflict and hazards associated with hunting by restricting hunting weapons used for big game to archery only.*

6) Littering, trash and maintenance concerns.

*Response: Under the adopted alternative, maintenance concerns would be minimal, as the island would not be developed. Periodic cleanups would occur. Responsible users and observant neighbors who report littering could help to deter this. FWP acknowledges that litter is a chronic problem on all public lands. However, the presence of litter is not justification for not acquiring additional public access for legitimate sportsmen and women and recreationists. The FWP Parks Division Leave No Trace educational initiative is another tool currently in use to reduce littering.*

7) Liability to neighboring property owners.

*Response: Legal liability is assessed based upon many complex factors. In general, liability to nearby neighbors and landowners resulting from uninvited or unlawful trespassers would likely not be increased unless a landowner was willfully negligent.*

8) Ice jam damage to fencing and signage.

*Response: Signs, fencing, or carsonite markers would be located in areas to minimize the threat of ice scour damaging or destroying the aids to identify ownership. If necessary, signage on the island would be installed and removed on a seasonal basis.*

9) Island too small for unlimited public access.

*Response: The 22-acre island is larger than many FWP administered FAS sites and provides adequate space for the enjoyment of the property as a public resource. Implementation of Alternative B also could limit the amount of public use of the area by encouraging river access only.*

10) Proximity to adjacent private property, invasion of privacy.

*Response: Landowners can only expect to have privacy on their land and can take measures to screen their property from adjacent properties. People who legally use adjacent lands would not be invading their privacy. If users "invaded" the adjacent land, then the County could prosecute them for trespassing. The Good Neighbor Policy also helps to deter this.*

11) Impacts associated with hunting and picnicking.

*Response: Currently under private ownership, no weapons restrictions are in effect on the subject property. Most of the hunting [shooting] would be for waterfowl and would be mostly directed away from the houses toward the river. FWP will take action to minimize conflict and hazards associated with hunting by restricting hunting weapons used for big game to archery only. Hunting on the FAS site would not affect wildlife at the population level. Picnicking is a legitimate use of public lands and if appropriate outdoor ethics are practiced, is an encouraged activity that would be available on this property.*

12) Property values would decrease.

*Response: Stewardship of riparian habitat on the donated property could also maintain or increase property values. More information is needed to address this comment. Comment noted.*

13) Inadequate parking space and potential damage to Joe's Trail pavement.

*Response: Under the alternative chosen, Alternative B, access will be by river only and parking near Joe's Trail will not be affected.*

14) Concerned with human waste.

*Response: The preferred alternative proposed included a latrine near the parking area. Alternative B does not include any provisions for installing waste facilities due to no development. FWP has no intention of installing a toilet on the island, due to the potential for flooding and ice jams. There is currently a public restroom just upstream at the Cascade North Park Fishing Access Site. FWP Parks Division has an active Leave No Trace outdoor ethics education initiative, where recreationists*

*using the river are encouraged to practice Leave No Trace techniques by properly disposing of human waste.*

15) Environmental impacts to island.

*Response: The EA stated that a trail would help control public use and reduce impacts to the site. The preferred alternative will not include a trail, which would reduce public use and promote access only from the river. Anticipated environmental impacts would be reduced further and continue to be minor in nature. Island grasslands are fairly resilient to human trampling and impacts. Frequent flooding and ice jams will continually reshape and deposit sediments that aid in reducing long term vegetation impacts. FWP Parks Division has an active Leave No Trace outdoor ethics education initiative, where recreationists using the river are encouraged to practice Leave No Trace techniques by minimizing their social and resource impacts.*

16) Concerned about potential overnight or late night use.

*Response: The site will be available for day use only with no overnight camping or nighttime activities permitted, which would mitigate this concern. This regulation will be posted accordingly and enforced by FWP Wardens.*

17) Trespass onto BNSF Right of Way.

*Response: Alternative B would not include providing public access across the BNSF Right of Way and the island would be promoted as accessible from the river only.*

18) Safety of public and employees on BNSF Right of Way is # 1 concern.

*Response: See answer to Number 17 above. Comment noted.*

19) BNSF has adopted a no tolerance policy regarding trespass on their property.

*Response: See answer to Number 17 above. Comment noted.*

20) Liability to BNSF Railway.

*Alternative B includes no provisions for providing public access across the BNSF Right of Way and the island would be promoted as accessible from the river only.*

21) Appraised value of property and value of donor's charitable IRS deduction.

*Response: The appraisal of the property was prepared by a licensed, certified property appraiser. Issues regarding the appraised value and possible charitable donation tax deduction should be directed to the Internal Revenue Service.*

22) Requested Public Hearing.

*Response: A public hearing was hosted by FWP in Cascade, MT on July 12, 2007*

**Those supporting the proposed action cited the following considerations:**

- 1) It's time to include in FAS system. *Response: Comment noted.*
- 2) Nice addition to public access. *Response: Comment noted.*
- 3) Fees? General public should not have to pay. *Response: Comment noted.*
- 4) Valuable project. *Response: comment noted.*
- 5) The more access on the Missouri River, the better. *Response: Comment noted.*
- 6) Do not see any threat to the health of the Missouri River *Response: Comment noted.*
- 7) Developed parking will make the site safer and more accessible. *Response: Comment noted.*
- 8) Adding a fence & signage will help public know which land is in their trust. *Response: Comment noted.*
- 9) To not accept this property would be a slap in the face of all those people who cannot afford their won riverfront property. *Response: Comment noted.*
- 10) Acquisition would be great ay to ensure quality access to the river *Response: Comment noted.*
- 11) Only alternative B & C should be considered. *Response: Comment noted.*

In addition to the public comments received by mail or E-mail, FWP conducted a formal Public Hearing in Cascade, MT on July 12, 2007 to discuss the proposed action. 16 members of the public attended the meeting and seven FWP representatives were present to respond to questions. A total of eight individuals provided formal testimony, all of which opposed the acquisition of the 22-acre property by FWP.

**Decision**

Based on the analysis in the EA, along with public comments received, Montana Fish, Wildlife & Parks has decided to proceed with Alternative B as stated in the draft Environmental Assessment. Through this alternative, FWP would acquire the 22-acre island in the Missouri River through donation from a private landowner. The acquired land would be managed in its undeveloped state as part of the Wing Dam FAS. No development would occur at this time. Public land acreage on the Missouri River at the Wing Dam FAS would increase, as would public access and recreational use. The acquired acreage will be promoted and advertised as accessible from the river only.

FWP supports the public's interest in providing additional access to public lands by making the Decision to acquire the subject property through donation and add it to our

inventory of public resources. At the same time, as a means of mitigating neighboring landowners concerns, the decision reached will not include any additional development or construction of an access trail at this time and the subject property will be promoted and advertised as accessible from the river only.

Although it is not part of this decision, FWP will continue its ownership and management of the existing 10-acre Wing Dam Fishing Access Site. Both portions of the FAS site will continue to be available for public access on a day use only basis, with no overnight camping. Other public use regulations that will be imposed and posted on the existing and newly acquired acreage include:

- Campfires, smoking, and fireworks are prohibited.
- Closed to public entry and use from 30 minutes before sunrise to 30 minutes after sunset.
- Pets must be leashed.
- Discharge of firearms and weapons prohibited, except for lawful hunting.
- Lawful hunting will be permitted; however due to proximity to private property, hunting weapons used for big game will be restricted to archery only.

FWP will pursue a formal Railroad Right of Way Crossing Permit from the Burlington Northern Santa Fe Railroad, to ensure legal public access onto and across the railroad property. Until such time as a formal crossing permit is obtained, the existing Wing Dam Fishing Access Site will remain unsigned and undeveloped. Any future development of the existing Wing Dam Fishing Access Site would be subject to a separate Environmental Assessment.

I have reviewed the EA and applicable laws, regulations, and policies and have determined that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement will not be prepared.

This action is subject to appeal, which must be submitted to the FWP Director in writing, and postmarked within 30 days of the date of this decision notice. The appeal must specifically describe the basis for the appeal, explain how appellant has previously commented to the Department or participated in the decision-making process, and lay out how FWP might address the concerns in the appeal.

If you have questions regarding this decision notice, or the final EA, please direct requests and questions to: Mr. Gary Bertellotti, Region Four Supervisor, 4600 Giant Springs Road, Great Falls, MT 59405, (406) 454-5840.

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Gary Bertellotti  
Region 4 Supervisor

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Date